IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929

WP(C).No. 24394 of 2004(D)

PETITIONER:

K.K. JOSE, S/O. KUNJUVAREED,
KOKADAN HOUSE, POTTA, CHALAKUDY.

BY ADV. SMT.K.V.BHADRA KUMARI
SMT.SHIBI. K.P.

RESPONDENTS:

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1. THE JOINT REGIONAL TRANSPORT OFFICER
SUB REGIONAL TRANSPORT OFFICE,
IRINJALAKUDA.

2. DEPUTY TAHSILDAR, REVENUE RECOVERY,
MUKUNDAPURAM.

3. SOBHANAN, S/O. KORUKUTTY,
KARAPPILLY HOUSE, P.O. MANAKULANGARA,
KODAKARA, THRISSUR DISTRICT.

R1 AND R2 BY GOVERNMENT PLEADER SRI. K.P. PRADEEP
R3 BY ADV. SRI.V.BINOY RAM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE AGREEMENT DATED 16.4.1993 EXECUTED BETWEEN THE PETITIONER AND THE THIRD RESPONDENT.

EXT.P2 TRUE COPY OF THE DEMAND NOTICE DATED 15.10.2003 ISSUED BY THE FIRST RESPONDENT TO THE PETITIONER.

EXT.P3 TRUE COPY OF THE PETITION SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DATED 10.12.2003 .

EXT.P4 TRUE COPY OF THE COMMUNICATION DATED 31.3.2004 ISSUED BY THE FIRST RESPONDENT TO THE PETITIONER.

EXT.P5 TRUE COPY OF THE REPLY SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT DATED 10.4.2004

EXT.P6 TRUE COPY OF THE DEMAND NOTICE DATED 13.7.2004 ISSUED BY THE 2ND RESPONDENT UNDER SECTION 7 OF THE RR ACT.

THIRD RESPONDENT'S EXHIBITS:

EXT.R3(a) TRUE COPY OF SALE AGREEMENT OF THE VEHICLE KEK 670

TRUE COPY

P.S. TO JUDGE.

C.N. RAMACHANDRAN NAIR, J.

W.P.C. NO. 24394 OF 2004

Dated this the 3rd day of December, 2007

JUDGMENT

Petitioner is challenging recovery proceedings for recovery of arrears of motor vehicle tax due for Bajaj Tempo van bearing registration No. KEK 670 . Petitioner's case is that vehicle was sold to third respondent in 1993 and tax was fully paid by the purchaser thereafter. Even though third respondent's wife did not confirm the transaction, counsel appearing for the third respondent in Court submitted that third respondent had in fact purchased the vehicle, but sold the same to another person and arrears now demanded is for the period after sale of vehicle by him. Tax sought to be recovered is for the period from 1.1.1999 to 31.12.2003. Even though counter affidavit is filed, RTO has not even stated the model of the vehicle. However, petitioner has stated in the W.P. that vehicle is of 1986 model. If vehicle is of 1986 model, and since Bajaj tempo van is a sturdy vehicle it would have run for several years without payment of motor vehicle tax. The first respondent does not have information about seizure of

the vehicle by the police or motor vehicle department on the ground of non-payment of tax. This Court directed the petitioner to make enquiries and trace the vehicle so as to enable the police to seize the vehicle. However, petitioner has not succeeded in it. Tax could be recovered from the registered owner and the person in possession and control of the vehicle as provided under Section 3 of the Motor vehicle Taxation Act. Petitioner is therefore prima facie liable as registered owner of the vehicle. However, since purchase of the vehicle is conceded by the third respondent and since he has a further case that the vehicle is again sold to another person, I feel recovery for indefinite period from the petitioner is arbitrary and unjust, more so when the first respondent or any authority in Kerala has not so far seized the vehicle. Since it is a commercial vehicle, fitness certificate was required for it's operation and without payment of tax, no certificate of fitness would be issued. In the circumstances, I dispose of the Writ Petition with direction to the second respondent to recover from the petitioner arrears of motor vehicle tax from 1.1.1999 to 31.12.2003 and if the petitioner offers payment of entire tax before 31.12.2007, to

exclude surcharge and recover only the tax arrears. If petitioner does not make payment of tax excluding surcharge by 31.12.2007 second respondent will proceed for recovery of tax with surcharge also. There will be direction to the first respondent not to recover any tax for period after 31.12.2003 without tracing the vehicle and the present owner.

W.P. is disposed of as above.

(C.N. RAMACHANDRAN NAIR)
Judge